IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2891 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AARIF GAFUR MOHMAD KHALIFA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE, AGP for Respondent No. 1 to 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 08/05/2000

ORAL JUDGEMENT

#. The petitioner - Arif Gafur Mohammed Khalifa, has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Surat City, Surat, in exercise of powers under Section 3(1) of the PASA Act, dated December

23, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration 1 offence registered against the petitioner. The detaining authority also took into consideration the statements of two anonymous witnesses and came to conclusion that the petitioner is a "dangerous person", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. Ms. Subhadra Patel, learned advocate for the petitioner has raised many contentions. However, she has restricted her argument to the fact that there is only one offence registered against the detenue. Statements of anonymous witnesses have been recorded on November 30, 1999 and verified by the detaining authority on December 22, 1999 and the order is passed on December 23, 1999. Therefore, there was no time for the detaining authority for properly exercising the powers under section 9(2) of the PASA Act. She submitted that if only one offence is left thereafter, the definition of the dangerous person cannot be employed in service and, therefore, the order is bad in law.

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. It is clear from the grounds of detention that the detaining authority has taken into consideration the statements of two anonymous witnesses. The authority came to a conclusion that the fear expressed by these witnesses is correct and genuine and, therefore, the authority exercised powers under Section 9(2) of the PASA Act by not disclosing the identity of the witnesses. This Court is at loss to appreciate how the detaining authority could have arrived at this conclusion in such short spell. The detaining authority has not filed any affidavit-in-reply. It is, therefore, not possible to know as to what were the factors and material considered by the detaining authority besides the statements of the anonymous witnesses to come to conclusion that the fear expressed by the witnesses was genuine, that the incidents stated by the witnesses were correct and that there was need for exercise of powers under Section 9(2) of the PASA Act.

#. Similar such situation arose before a Division Bench

of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat & Ors. 1993 (2) GLR 1659, where the statements were verified on 16th October, 1992 and the order was passed on 17th October, 1992 and the Division Bench said that exercise of powers under Section 9(2) of the PASA Act was improper. This improper exercise of powers under Section 9(2) of the PASA Act was held to be detrimental to the right of the detenue of making an effective representation contemplated under Article 22(5) of the Constitution. The order of detention was, therefore, quashed. The facts of the present case squarely fall in line with the facts of that case. The order of detention, therefore stands vitiated in the instant case as well and the petition deserves to be allowed.

#. Plain reading of the definition of dangerous person indicates that in order to bring the activity of the petitioner, there must be plurality of acts which is not the case here. Only one case is registered against the petitioner and, therefore, the subjective satisfaction recorded by the detaining authority that the activities of the detenue are that of a dangerous person and that he falls within the definition of dangerous person cannot be considered. The petition, therefore, deserves tobe allowed.

#. The petition is allowed. The order of detention dated December 23, 1999 is hereby quashed and set aside. The detenue - Arif Gafur Mohammed Khalifa is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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